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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

CHERYL EILEEN MURRAY
864 McElroy Street
Oakland CA 94607

Applicant/Respondent.

Case No. 1H 2007 509

STATEMENT OF ISSUES

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 10, 2007, the Respiratory Care Board (Board) received an application for a respiratory care practitioner license from Cheryl Eileen Murray (Respondent). On or about July 27, 2007, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on January 31, 2008. In a letter the Board received on March 21, 2008, Respondent requested a hearing on the denial.

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JURISDICTION

3. This Statement of Issues is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.”

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within

1 the meaning of this article. The board shall order the license suspended or revoked, or
2 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section
5 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
6 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
7 accusation, information, or indictment.”

8 8. Section 3754 of the Code states:

9 “The board may deny an application for, or issue with terms and conditions, or
10 suspend or revoke, or impose probationary conditions upon, a license in any decision
11 made after a hearing, as provided in Section 3733.”

12 9. California Code of Regulations (CCR), title 16, section 1399.370, states:

13 “For the purposes of denial, suspension, or revocation of a license, a crime or act
14 shall be considered to be substantially related to the qualifications, functions or duties of
15 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
16 perform the functions authorized by his or her license or in a manner inconsistent with the
17 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
18 those involving the following:

19 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
20 abetting the violation of or conspiring to violate any provision or term of the Act.

21 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.”

22 COST RECOVERY

23 10. Section 3753.5, subdivision (a) of the Code states:

24 "In any order issued in resolution of a disciplinary proceeding before the board,
25 the board or the administrative law judge may direct any practitioner or applicant found to have
26 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
27 investigation and prosecution of the case."

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1 11. Section 3753.7 of the Code states:

2 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees."

5 12. Section 3753.1 of the Code states:

6 "(a) An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation. "

9 FIRST CAUSE FOR DENIAL

10 (Substantially related convictions)

11 13. Respondent's application is subject to denial pursuant to code sections
12 3750(d) and (g), 3752 and CCR 1399.370(a)[conviction of a substantially-related crime] and
13 CCR 1399.370(b)[conviction of a crime involving fiscal dishonesty, theft, or larceny.] The
14 circumstances are as follows:

15 March 1997 conviction

16 14. On or about February 14, 1997, in the State of Virginia, respondent was
17 arrested for violating Virginia statute 18.2-96, petit larceny, for taking property valued at \$40.00
18 from a J.C. Penney store. On March 10, 1997, respondent entered a plea of guilty and was
19 convicted of this misdemeanor offense. She was ordered to pay a fine, sentenced to sixty days
20 jail with sixty days suspended conditioned upon being of good behavior and keeping the peace.
21 She was placed on probation for forty hours community service.

22 June 1998 conviction

23 15. On or about January 10, 1998, respondent allegedly stole property valued
24 at \$24.00 from Kaufmann's store. On January 26, 1998, a citation was issued for violating
25 Pennsylvania statute CC3929A1, retail theft. On June 1, 1998, respondent entered a plea of
26 guilty, and was ordered to pay a fine and costs totaling \$118.75.

27 16. Respondent's application is subject to denial based on her conviction for
28 petit larceny in the state of Virginia, and her conviction for retail theft in the state of

1 Pennsylvania, which is in violation of code sections 3750(d) and 3752 [conviction of a crime],
2 3750(g), CCR 1399.370(a) [substantial relationship criteria] and CCR 1399.370(b) [conviction
3 of a crime involving fiscal dishonest, theft or larceny.]

4 SECOND CAUSE FOR DENIAL

5 (Fraudulent, Dishonest or Corrupt Acts)

6 17. Paragraphs 14 and 15 are incorporated herein.

7 September 1998 citation

8 18. On or about June 26, 1998, respondent allegedly stole merchandise from a
9 store. On or about July 13, 1998, respondent was issued a citation for violating Pennsylvania
10 statute CC3929A1, retail theft. On or about September 3, 1998, respondent was fined \$175.50.

11 November 1999 citation

12 19. On or about October 25, 1998, respondent allegedly stole merchandise
13 from a store. On or about November 4, 1998 respondent was issued a citation for two counts of
14 violating Pennsylvania statute CC3929A1, retail theft, and one count was withdrawn. On
15 November 12, 1998, respondent was ordered to pay a fine of \$100.00 and \$74.50 in costs.

16 20. Respondent's citations in 1998 and 1999 constitute cause to deny her
17 application pursuant to code section 3750(j) [fraudulent, dishonest or corrupt act].

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

21 1. Denying the application for a Respiratory Care Practitioner License
22 submitted by Cheryl Eileen Murray;

23 2. Ordering Cheryl Eileen Murray to pay the Respiratory Care Board the
24 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
25 probation monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: June 11, 2008

Original signed by: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

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